IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. WILLIAM CHAPMAN MACH, Petitioner.	2 CA-CR 2008-0162-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-41433

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines
Tucson
Attorneys for Respondent

William Chapman Mach
Florence
In Propria Persona

H O W A R D, Presiding Judge.

¶1 Petitioner William Mach seeks review of the trial court's summary dismissal of a successive petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We will disturb such a ruling only if the court has clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 After a jury found Mach guilty of sexual conduct with a minor under fourteen, a class two felony and dangerous crime against children, the trial court sentenced him in 1998 to a presumptive, twenty-year prison term, to be served day for day.[1] We affirmed his conviction and sentence on appeal in *State v. Mach*, No. 2 CA-CR 98-0627 (memorandum decision filed Jan. 11, 2000). He then filed his first petition for post-conviction relief, alleging ineffective assistance of counsel at trial. The trial court denied relief, and we upheld its ruling on review. *State v. Mach*, No. 2 CA-CR 01-0410-PR (memorandum decision filed Feb. 7, 2002).

¶3 After filing a second, unsuccessful post-conviction petition in 2004, Mach then initiated the current proceeding with the filing of his third petition for post-conviction relief in 2008. In it, Mach alleged that the United States Supreme Court's decisions in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Blakely v. Washington*, 542 U.S. 296 (2004), were retroactively applicable to him and entitled him to be resentenced. Mach claimed his Sixth

[1]Mach was actually tried twice for the offense and was convicted both times. His first conviction, following a 1993 jury trial, was overturned by the United States Court of Appeals for the Ninth Circuit in a habeas corpus proceeding. *Mach v. Stewart*, 137 F.3d 630 (9th Cir. 1998). He was then retried and convicted again in 1998.

and Fourteenth Amendment rights had been violated at sentencing when the trial court, rather than a jury, had made "subjective findings . . . related to unproven aggravating factors" and had failed to find certain additional mitigating factors beyond the ones it noted.

¶4 The trial court dismissed Mach's petition in a minute entry ruling that states in pertinent part:

> On March 27, 2008, Petitioner filed a successive Petition for Post Conviction Relief. Such a petition is precluded unless Petitioner asserts one of the claims listed in Rule 32.1(d)–(h). *See*[] Rule 32.2. Here, Petitioner asserts that his sentence was not "in accordance with the sentence authorized by law" and that "there has been a significant change in the law that . . . would probably overturn the defendant's conviction or sentence." Rule 32.1(c), (g).
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> To avoid summary dismissal Petitioner must also present the court with meritorious reasons for not raising these issues in a timely manner. Rule 32.2(b). Petitioner asserts that these claims were not raised before because the "[i]ssue [was] first recognized in *Blakely v. Washington* (2004) and made probably retroactive by [*State v.*] *Munninger*[, 209 Ariz. 473, 104 P.3d 204] ([App.] 2005)[,] and *Danforth v. Minnesota*[, ___ U.S. ___, 128 S. Ct. 1029] (2008)." . . . .
>
> As *Danforth* does not make *Blakely* retroactive in Arizona and waiting until *Danforth* was decided does not constitute a meritorious reason for delay, Petitioner has not presented meritorious reasons for failing to raise these issues in a timely manner. Therefore, the Petition is summarily DISMISSED.

(Footnote omitted.)

¶5 We find no abuse of the trial court's discretion in dismissing Mach's third petition summarily because Mach failed to satisfy the criteria of Rule 32.1(g) for claims

based on a significant change in the law.[2] In addition to the reasons the court gave for its ruling, Mach could not show that applying *Blakely* retroactively to him would have affected his sentence in any event. *Blakely* requires that a jury, rather than the sentencing court, find beyond a reasonable doubt "'any fact that increases the penalty for a crime beyond the prescribed statutory maximum.'" *Blakely*, 542 U.S. 296, 301, *quoting Apprendi*, 530 U.S. at 490. "[T]he 'statutory maximum' for *Apprendi* purposes is the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." *Blakely*, 542 U.S. at 303. Typically, unless "aggravating factors have been proved to a jury beyond a reasonable doubt," *State v. Martinez*, 210 Ariz. 578, ¶ 17, 115 P.3d 618, 623 (2005), the prescribed statutory maximum sentence authorized by a jury verdict in Arizona will be the presumptive sentence. *State v. Brown*, 209 Ariz. 200, ¶ 12, 99 P.3d 15, 18 (2004).

¶6 Mach was sentenced to a presumptive prison term, enhanced because his offense—sexual conduct with a minor under fourteen—was a dangerous crime against children. At the time Mach committed the offense in March 1993, the statute defining dangerous crimes against children included sexual conduct with a minor "committed against a minor under fifteen years of age" and specified a presumptive sentence of twenty years for

[2]To the extent that, as the trial court stated, Mach also raised a claim pursuant to Rule 32.1(c)—that his sentence "exceeded the maximum authorized by law, or is otherwise not in accordance with the sentence authorized by law"—that claim was plainly precluded. Claims under Rule 32.1(c) are not among the claims for relief recognized by Rule 32.2(b) as potentially excepted from preclusion.

a first offender. 1993 Ariz. Sess. Laws, ch. 33, § 1. The indictment, as read to the jury by the clerk, charged Mach with sexual conduct with a minor under the age of fourteen. The jury returned a guilty verdict. Consequently, Mach's twenty-year sentence was authorized "solely on the basis of the facts reflected in the jury verdict," *Blakely*, 542 U.S. at 303, and the court's imposition of that sentence did not violate the tenets of *Blakely*, even had *Blakely* been retroactively applicable to Mach, which it was not. *See State v. Febles*, 210 Ariz. 589, ¶¶ 7-17, 115 P.3d 629, 632-35 (App. 2005).

¶7 The trial court did not abuse its discretion in summarily dismissing Mach's latest petition for post-conviction relief. Although we grant the petition for review, we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

J. WILLIAM BRAMMER, JR., Judge